Johar bin Mustapha v Public Prosecutor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–57 OF 2008
ZAKI AZMI CHIEF JUSTICE, ALAUDDIN PCA AND HASHIM YUSOFF FCJ
16 SEPTEMBER 2009

Criminal Law — Dangerous drugs — Trafficking — Appeal against conviction and sentence — Whether trial judge and judges of Court of Appeal had erred — Whether accused had knowledge necessary to establish possession — Whether there was evidence to support charge of trafficking — Whether there were material contradictions in prosecution evidence — Whether accused's defence had raised reasonable doubt — Dangerous Drugs Act 1952 ss 2, 37(da), 39B(1)(a)

The car driven by the accused skidded and went off the road while avoiding another vehicle. When passers-by went to the assistance of the accused the latter acted strangely and shoved the helpers away. One of the witnesses to the accident who had also offered assistance to the accused ('the eyewitness') then saw the accused open the trunk of his car, remove a blue package and throw it away. The eyewitness became suspicious and telephoned the police. When the police arrived the accused attempted to run away but was apprehended. The eyewitness went to the aid of the police and led them to recover the blue package which he had witnessed being thrown by the accused. A subsequent analysis of the blue package showed that it contained 19,152g of cannabis. The accused was charged with the offence of trafficking under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). In his defence the accused denied that the blue package was in the boot of his car, that the package belonged to him and that he was transporting the cannabis in the package for the purpose of trafficking. Instead the accused maintained that he opened the boot of his car to take out a jack and spanner to repair his car. The trial judge found that the accused's strange conduct in driving away those who came to his assistance, and running when the police came onto the scene showed guilty knowledge on the part of the accused. Although the trial judge was of the view that the accused's defence that he had opened the boot of his car to look for tools to fix a punctured tyre was a recent invention, he nevertheless warned himself that he was still bound to consider it. When the appellant was convicted on the charge and sentenced to death he appealed to the Court of Appeal. The Court of Appeal scrutinised the totality of the evidence and the inferences drawn by the trial judge and concluded that there was no appealable error or misdirection on the part of the trial judge. Hence the

present appeal wherein the accused submitted that the trial judge and the judges of the Court of Appeal had erred in law and fact in finding that the accused had relevant knowledge to prove possession when the inferences proved otherwise, in finding that mens rea possession had been proven and in finding that trafficking had been established.

Held, dismissing the appeal against conviction and sentence:

(1) The combined effect of the evidence, that the accused had opened the boot of his car to throw away the package that contained the cannabis; that the accused acted strangely when his car went off the road and he was offered assistance by passers by; and that the accused ran when the police came on to the scene, in the absence of any reasonable explanation by the accused was sufficient to make an affirmative finding that the accused was in possession of the proscribed drugs (see paras 32–35).

(2) From the facts in the present case there was overwhelming evidence of possession of the drugs found in the blue package which the appellant was consciously in the act of conveying (see para 38).

(3) Since the prosecution had already proven actual possession of the drugs and as the weight of the cannabis found exceeded 200g, the presumption of trafficking as provided in s 37(da) of the Act ought to be invoked against the accused. Further, the act of the accused in carrying a large quantity of cannabis in the boot of his car amounted to the act of trafficking as defined in s 2 of the Act. Thus from the totality of the evidence there was abundant evidence to support a charge of trafficking with or without resorting to the presumption of trafficking under the Act (see paras 40–43).

(4) The allegation that there were material contradictions in the testimonies of the eyewitness and the police officer who arrived at the scene was a question of fact that would be better dealt with by the judge. In any case there were no material contradictions in the prosecution evidence or infirmities in the concurrent findings of facts by the trial judge and the judges of the Court of Appeal to require appellate interference (see paras 46–52).

(5) The accused's defence that the police had brought the blue package from nowhere was neither credible nor probable. The police and the eyewitness, an independent witness, had no reason or motive to implicate the accused. As such, the accused's defence had failed to raise any reasonable doubt that he was in possession of the drugs in the boot of the car or that he was trafficking in the drugs as per the charge (see paras 54, 56–57).

[Bahasa Malaysia summary

Kereta yang dipandu oleh tertuduh tergelincir dan terbabas dari jalanraya ketika mengelak kenderaan yang lain. Apabila orang yang lalu di situ datang untuk membantu, tertuduh berkelakuan ganjil dan menolak orang-orang yang membantunya. Salah seorang daripada saksi-saksi kemalangan tersebut yang juga menawarkan bantuan kepada tertuduh ('saksi tersebut') kemudiannya melihat tertuduh membuka but keretanya, mengeluarkan suatu bungkusan biru dan membuangnya. Saksi tersebut menjadi curiga dan menelefon polis. Apabila polis tiba tertuduh cuba melarikan diri tetapi telah berjaya ditangkap. Saksi tersebut membantu polis dan membawa mereka mendapatkan kembali bungkusan biru yang mana telah disaksikannya dilempar oleh tertuduh. Satu analisa yang kemudiannya dilakukan terhadap bungkusan biru menunjukkan bahawa ia mengandungi 19,152g kanabis. Tertuduh dituduh dengan kesalahan mengedar di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('Akta tersebut'). Dalam pembelaan tertuduh menafikan bahawa bungkusan biru itu berada dalam but keretanya, bahawa bungkusan itu adalah kepunyaannya dan bahawa dia membawa kanabis dalam bungkusan itu bagi tujuan pengedaran. Sebaliknya tertuduh menegaskan bahawa dia membuka but keretanya untuk mengeluarkan satu jek dan sepana untuk membaiki keretanya. Hakim perbicaraan mendapati bahawa kelakuan aneh tertuduh yang menghalau mereka yang datang untuk membantunya, dan lari apabila polis tiba ke tempat kejadian menunjukkan pengetahuan bersalah tertuduh. Walaupun hakim perbicaraan berpandangan yang pembelaan tertuduh bahawa dia telah membuka but keretanya untuk mencari alat-alat bagi membaiki tayar pancit adalah cerita rekaannya yang baru, beliau bagaimanapun mengingatkan dirinya bahawa beliau masih lagi terikat untuk menimbangkannya. Apabila perayu telah disabitkan terhadap pertuduhan tersebut dan dihukum mati dia merayu kepada Mahkamah Rayuan. Mahkamah Rayuan meneliti keseluruhan bukti dan inferens-inferens yang dibuat oleh hakim perbicaraan dan menyimpulkan bahawa tidak ada kesilapan yang boleh dirayu atau salah arah oleh hakim perbicaraan. Oleh itu rayuan ini di mana tertuduh menghujahkan bahawa hakim perbicaraan dan hakim-hakim Mahkamah Rayuan telah khilaf dari segi undang-undang dan fakta apabila berpendapat bahawa tertuduh mempunyai pengetahuan relevan bagi membuktikan milikan apabila inferens-inferens membuktikan sebaliknya, dalam memutuskan bahawa mens rea milikan telah dibuktikan dan dalam memutuskan bahawa pengedaran telah dibuktikan.

Diputuskan, menolak rayuan terhadap sabitan dan hukuman:

(1) Kesan akibat penggabungan keterangan, iaitu bahawa tertuduh telah

membuka but keretanya untuk membuang bungkusan yang mengandungi kanabis; bahawa tertuduh berkelakuan ganjil apabila keretanya terbabas dari jalanraya dan dia ditawarkan bantuan oleh orang yang lalu lalang; dan bahawa tertuduh lari apabila polis tiba di tempat kejadian, tanpa apa-apa alasan munasabah oleh tertuduh adalah mencukupi untuk memutuskan bahawa tertuduh mempunyai dalam milikannya dadah yang diharamkan (lihat perenggan 32–35).

(2) Daripada fakta-fakta dalam kes ini terdapat keterangan yang kukuh mengenai milikan dadah yang dijumpai dalam bungkusan biru yang dibawa oleh perayu secara sedar (lihat perenggan 38).

(3) Memandangkan pendakwaan telah membuktikan milikan sebenar dadah tersebut dan berat kanabis itu didapati melebihi 200g, anggapan pengedaran yang diperuntukkan di bawah s 37(da) Akta tersebut seharusnya digunakan terhadap tertuduh. Selanjutnya, tindakan tertuduh yang membawa satu jumlah besar kanabis dalam but keretanya merupakan tindakan pengedaran seperti yang ditafsirkan dalam s 2 Akta tersebut. Oleh itu daripada keterangan secara keseluruhannya terdapat keterangan kukuh untuk menyokong satu tuduhan pengedaran dengan atau tanpa menggunakan anggapan pengedaran di bawah Akta tersebut (lihat perenggan 40–43).

(4) Dakwaan bahawa terdapat percanggahan-percanggahan material dalam testimoni-testimoni saksi-saksi dan pegawai polis yang tiba di tempat kejadian itu adalah persoalan fakta yang lebih baik dipertimbangkan oleh hakim tersebut. Walau bagaimanapun tidak terdapat percanggahan material dalam keterangan pihak pendakwaan atau kelemahan dalam penemuan-penemuan selaras fakta-fakta oleh hakim perbicaraan dan hakim-hakim Mahkamah Rayuan hingga memerlukan campur tangan mahkamah rayuan (lihat perenggan 46–52).

(5) Pembelaan tertuduh bahawa polis telah membawa bungkusan biru tersebut tidak boleh dipercayai mahupun berkemungkinan. Polis dan saksi tersebut, seorang saksi bebas, tidak mempunyai sebab atau motif untuk membabitkan tertuduh. Oleh itu, pembelaan tertuduh telah gagal menimbulkan apa-apa keraguan yang munasabah bahawa dia memiliki dadah dalam but kereta atau bahawa dia mengedar dadah seperti dalam pertuduhan (lihat perenggan 54, 56–57).]

Notes

For cases on trafficking, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 126–137.

Cases referred to

Alcontara a/l Ambross Anthony v PP [1996] 1 MLJ 209, FC (refd)
Andy bin Bagindah v PP [2000] 3 MLJ 644, CA (refd)

A *Chan Pean Leon v PP* [1956] MLJ 237, HC (refd)
Director of Public Prosecutors v Brooks (Wishart) [1974] 2 All ER 840, PC (refd)
Mohamad Yazri bin Minhat v PP [2003] 2 MLJ 241, CA (refd)
Ong Ah Chuan v PP; Koh Chai Cheng v PP [1981] 1 MLJ 64, PCA (refd)
B *Parlan bin Dadeh v PP* [2008] 6 MLJ 19, FC (refd)
PP v Abdul Rahman bin Akif [2007] 5 MLJ 1, FC (refd)
PP v Munusamy [1980] 2 MLJ 133, FC (refd)
Tan Kim Ho & Anor v PP [2009] 3 MLJ 151; [2009] 3 CLJ 236, FC (refd)
Warner v Metropolitan Police Commissioner [1968] 2 All ER 356, HL (refd)
C

Legislation referred to
Common Gaming Houses Act 1953
Dangerous Drugs Act 1952 ss 2, 37(da), 39B(1)(a)

D

Appeal from: Criminal Appeal No J-05–06 of 2003 (Court of Appeal, Putrajaya)

Kamarul Hisham Kamaruddin (The Chamber of Kamarul Hisham & Hasnal Rezua) for the appellant.
E *Nurulhuda Nur'aini bt Mohd Noor (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.*

Alauddin PCA (delivering judgment of the court):

F INTRODUCTION

[1] The appellant was charged for an offence of trafficking in dangerous drugs under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA') in the G High Court at Muar.

[2] The said charge reads as follows:

> Bahawa kamu pada 2hb Mei 1999, jam lebih kurang 10.10 malam di KM 132.5 Jalan Johor Bahru — Segamat, Cha'ah, dalam daerah Segamat, dalam Negeri H Johor, telah didapati mengedar dadah berbahaya iaitu 19,152 cannabis dan dengan itu, kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

I **[3]** At the end of the trial the appellant was convicted on the said charge and sentenced to death.

[4] The appellant's appeal to the Court of Appeal against the said conviction by the High Court was dismissed. Hence the present appeal to the

Federal Court.

BACKGROUND FACTS

[5] On 2 May 1999 at about 9pm, PW5 was seated at a food stall at Cha'ah located at the 132.5km along the Johor Bahru — Segamat Road. He was with his friends.

[6] At about that time he (PW5) noticed a white car coming from the direction of Segamat towards Yong Peng go off the road while avoiding another vehicle. This happened across the road from where he was seated.

[7] He saw a man later identified as the accused (the appellant before us) emerge from the car. PW5 and his friends went towards the appellant. They wanted to help him. They were concerned to see if he was alright. But the appellant acted rather strangely. He shoved them away. They then returned to the food stall.

[8] Soon after, PW5 saw the appellant open the trunk of the car, remove a blue package and throw it away.

[9] He (PW5) became suspicious and telephoned the police.

[10] While making the phone call PW5 observed the appellant standing alone near the car.

[11] About half an hour later, a tow truck arrived at the scene but then moved away.

[12] Shortly after that the police arrived in a land rover. On seeing them the appellant began to run away. He was apprehended.

[13] PW5 then assisted PW6 (Corporal Rosli Hamid) who was among the police personnel who had arrived at the scene.

[14] He narrated to PW6 what he had witnessed and pointed in the direction in which the blue package had been flung. The package was then recovered. It was produced as exh P6B at the trial.

[15] PW6 opened the package. From within it was recovered a substance which upon subsequent chemical analysis was found to be 19,152g of cannabis.

[16] Then one Halim bin Kadir, a friend of the appellant arrived at the scene in a red car and met PW6. Halim was there to help the appellant tow the car. Halim was also arrested but was released later as a search conducted on him and his car did not find anything incriminating.

[17] In his defence the appellant denied that the said package containing cannabis was in the boot of his car, that the said package containing cannabis belonged to him and that he was transporting the said package containing cannabis for the purpose of trafficking.

[18] The appellant however did not dispute the facts that his car skidded off the road at Cha'ah, that he was approached by the villagers who came to help him, that he drove them away as he did not require their help.

[19] The accused admitted opening the boot of his car but only to take out a jack and spanner to jack his car.

FINDINGS OF THE HIGH COURT

[20] In dealing with the evidence before him the learned trial judge in his judgment (see p 46 of the appeal record) came to this finding of fact:

> The evidence in the instant case clearly proved that the package containing the said 21 blocks of cannabis was in the boot of a car, that at or about the 132.5km Johor Bahru to Segamat Road, was traveling from the direction of Segamat towards the direction of Yong Peng, under the direction and control of the accused. The obvious question is whether the accused was aware that he was driving a car with a package containing cannabis in the boot. Obviously, the accused must be consciously moving drugs from one place to another, if he were aware that he was driving a car with a package containing drugs in the boot.

[21] In relation to the conduct of the appellant (see p 46 of the appeal record) the learned trial judge found as follows:

> The evidence was that the accused drove away those persons who came to assist him. That conduct was strange, as a person involved in a motor accident does not ordinarily drive away even strangers, who came to render him assistance, even if he does not require their assistance. The accused might not have required the assistance of SP5 and friends. If that were the case, the normal conduct should be to turn down or decline the offer of assistance, but in the event not to eject SP5 and friends whose intention was not malevolent and whose presence at the scene was not any hindrance or was in the way of the accused.

[22] Dealing with the conduct of the appellant in running away when the police arrived the learned trial judge had this to say (see p 47 of the appeal record):

> That conduct was also strange, as the accused was involved in only a minor road accident involving just him and his car, and given so there was really no reason for the accused to run from the scene … It was a police land rover that had arrived at the scene, and the persons who alighted … were policeman in police uniform. So what plausible reason was there for the accused to suddenly pick himself up from his squatting position and attempt to get away from the scene …? Rather, that conduct of the accused was consistent with guilty knowledge …

[23] In respect of the evidence of the accused opening the boot of the car and throwing away the blue package, the learned trial judge opined as follows (see p 48 of the appeal record):

> The overt acts of the accused also showed that the accused was aware that the said package was in the boot of the car he was driving, and that that package contained thing or things incriminatory. The evidence was that the accused opened the boot and then removed the said package. To begin with, the accused would have seen that package in the boot when he opened the boot of the car … The further overt act of the accused was to throw the package he had removed from the boot to the right front side of his car … When all things are considered, the situation and overt acts point only to knowledge …

[24] In calling upon the appellant to enter upon his defence the learned trial judge made the following findings (see p 49 of the appeal record):

> The aforesaid maximum evaluation of the prosecution evidence shows that by direct evidence the prosecution had proved that the accused was in actual possession of the cannabis in question, and that at the material time of possession the accused was consciously moving the said package containing the said cannabis from one place to another. ...
>
> The facts and circumstances, and the quantity of cannabis only say that it was trafficking. Even without legal presumptions, there is clear, strong and credible evidence to each ingredient of the offence of trafficking. On that there is no doubt.

[25] Having evaluated the defence of the appellant the learned trial judge concluded as follows (see p 63 of the appeal record):

> In a word, the essential defence was that the said package containing cannabis was never in WBB 6888, that there was no nexus between the accused and the package containing cannabis and that the accused opened the boot only to look for tools to fix the puncture to the left front tyre of the car …

[26] Continuing at p 64 of the appeal record the learned trial judge said:

> … the defence had not put its case — there was a tyre – puncture, … at the earliest possible stage. In addition, the defence had not challenged the testimony of SP5 that the accused threw a package to the right front side of his stationary car, that SP5 informed SP6 of the direction in which the package was thrown, and that the accused was the only person near his stationary car.

[27] Having said that the defence had not put its case at the earliest possible stage the learned judge was of the view that the narrative of the accused was a recent invention in which case he warned himself that he was still bound to consider it based on the authority of *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209 in which the Federal Court held (at p 218):

> … It is settled law that, although a court may view with suspicion a defence which has not been put to the appropriate prosecution witnesses who might have personal knowledge of the points at issue, the court is still bound to consider the defence, however weak, and to acquit if not satisfied that the prosecution has discharged the burden of proof which rests upon it.

THE FINDINGS OF THE COURT OF APPEAL

[28] From the records, it appears to us that the thrust of the appelant's appeal before the Court of Appeal was based on the findings of facts by the learned trial judge.

[29] The Court of Appeal as reflected in its judgment (at p 11 of the appeal record Vol 1) had scrutinised the totality of the evidence and the inferences drawn by the learned trial judge and concluded thus:

> We have scrutinised with great care the totality of the evidence presented before the learned judge and his treatment and analysis of it. Having done so we are unable to detect any appealable error or misdirection on his part. On the contrary, the learned judge has admirably discussed the facts and the irresistible inferences that fell to be drawn from the primary facts.

THE APPEAL

[30] Before us the judgments of the learned trial judge and the Court of Appeal were attacked on the following grounds:

(1) The learned judges of the Court of Appeal and the trial judge had erred in law and fact in finding that the appellant had the relevant knowledge to prove possession whilst the evidence of the prosecution witnesses were ambiguous, insufficient and had created inferences leaning towards the appellant.

(2) The learned judges of the Court of Appeal and the trial judge had erred in law and fact in including all the evidence collectively to support the finding of fact sufficient to prove '*mens rea possession*'.

(3) The learned judges of the Court of Appeal and the trial judge had erred in law and fact when considering the sole fact that the appellant was on his way from Segamat to Yong Peng with exh P6B to arrive at the finding of '*actus reus*' in trafficking and therefore had failed to conclude that the appellant was merely in '*passive possession*'.

EVIDENCE OF POSSESSION AND KNOWLEDGE AT THE CLOSE OF THE PROSECUTION'S CASE

[31] In *Chan Pean Leon v Public Prosecutor* [1956] MLJ 237, Thomson J dealt with the issue of possession under the Common Gaming Houses Act 1953 and observed (at p 239):

> 'Possession' itself as regards the criminal law is described as follows in *Stephen's Digest* (9th Ed, p 304):
>
> > A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.
>
> To put it otherwise, there is a physical element and mental element which must both be present before possession is made out. *The accused must not only be so situated that he can deal with the thing as if it belonged to him, for example have it in his pocket or have it lying in front of him on a table. It must also be shown that he had the intention of dealing with it as if it belonged to him should he see any occasion to do so*, in other words, that he had some animus possidendi. Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances … (Emphasis added.)

[32] Now, coming back to the instant appeal, at the close of the prosecution's case there was the evidence that the appellant opened the boot of his car and took out the blue package containing the said drugs and threw it away to a spot next to his car.

[33] There was the evidence of conduct on the part of the appellant that after his car skidded, he had refused help from SP5 and his friends. Instead he shooed them away.

[34] There was also evidence that the appellant was seen running away from the scene upon seeing the police arrive even before the discovery of the

said blue package containing the drugs (see *Parlan bin Dadeh v Public Prosecutor* [2008] 6 MLJ 19 and *Director of Public Prosecutors v Brooks (Wishart)* [1974] 2 All ER 840).

[35] In the absence of any reasonable explanation by the appellant, we would say that the combined effect of all these evidence is sufficient for the court to make an affirmative finding that the appellant was in possession of the proscribed drugs.

[36] The issue of knowledge necessary to establish possession was considered in *Public Prosecutor v Abdul Rahman bin Akif* [2007] 5 MLJ 1 where the Federal Court cited and referred to the case of *Warner v Metropolitan Police Commissioner* [1968] 2 All ER 356.

[37] In *Warner v Metropolitan Police Commissioner* Lord Morris, in his judgment had this to say:

> … if, however someone deliberately so assumes control of some of the package or container, then I would think that he is in possession of it. *If he deliberately so assumes control knowing that it has contents, he would also be in possession of the contents. I cannot think that it would be rational to hold that someone who is in possession of a box which he knows to have things in it is in possession of the box but not in possession of the things in it*. If he had been misinformed or misled as to the nature of the contents, or if he had made a wrong surmise as to them, it seems to me that he would nevertheless be in possession of them. (Emphasis added.)

[38] As such, from the facts before the court, we are satisfied that there was overwhelming evidence of possession of the drugs found in the blue package which the appellant was consciously in the act of conveying.

[39] Again, in *Warner*'s case Lord Wilbeforce held as follows:

> In all such cases, *the starting point will be that the accused had physical control of something — a package, a bottle, a container — found to contain the substance. This is evidence — generally strong evidence of possession. It calls for an explanation*. The explanation will be heard and the jury must decide whether there is genuine ignorance of the presence of the substance, or such an acceptance of the package with all that it might contain, or with such opportunity to ascertain what it did contain or such guilty knowledge with regard to it as to make up the statutory possession. (Emphasis added.)

EVIDENCE OF TRAFFICKING

[40] Coming now to the element of trafficking, we are of the opinion that since the prosecution have already proved actual possession of the drugs by the appellant and as the weight of the proscribed drugs exceeded 200g (cannabis), the presumption of trafficking as provided in s 37(da) of the DDA ought to be invoked against the appellant.

[41] In our respectful view, the act of the appellant in carrying or transporting a large quantity of drugs ie 19,152g of cannabis in the boot of his car amounted to the act of trafficking of the said drugs as defined under s 2 of the DDA 1952.

[42] Section 2 of the DDA 1952 provides that:

> 'trafficking' includes the doing of the following acts, that is to say, manufacturing, importing, exporting, *keeping*, concealing, buying, selling, giving, receiving, storing, administering, *transporting*, *carrying*, sending, *delivering*, procuring, supplying or distributing any dangerous drugs. (Emphasis added.)

[43] Therefore, in our judgment, looking at the totality of the evidence before the court, we conclude that there is abundant evidence to support a charge of trafficking, with or without resorting to the presumption of trafficking under s 37(da) of the DDA 1952.

[44] We feel it is appropriate at this juncture to refer to the '*purpose approach*' in the judgment of Lord Diplock in the celebrated case of *Ong Ah Chuan v Public Prosecutor; Koh Chai Cheng v Public Prosecutor* [1981] 1 MLJ 64 where it was held (at p 69) as follows:

> Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. *Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did*. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible — even if there were no statutory presumption such as is contained in s 15 of the Drugs Act (see also *Public Prosecutor v Ouseng sama-Ae* [2008] 1 CLJ 337). (Emphasis added.)

[45] There is no doubt to us that the evidence in our case supports such inference to be drawn as in *Ong Ah Chuan*. The same principle was also applied in *Mohamad Yazri bin Minhat v Public Prosecutor* [2003] 2 MLJ 241.

WHETHER THERE WERE MATERIAL CONTRADICTIONS IN THE PROSECUTION'S EVIDENCE

[46] The alleged conflicting testimonies were said to have come from the evidence of PW5 and PW6. PW5 described the appellant's act as '*berlari-lari anak*' when he (the appellant) saw the police arrive whilst PW6 described it as '*berlari*'. The learned trial judge accepted the evidence as '*the accused ran from the scene*' (see p 47 of the appeal record).

[47] The Court of Appeal in dealing with the same issue agreed with the learned trial judge on his assessment of the evidence (see *Andy bin Bagindah v Public Prosecutor* [2000] 3 MLJ 644).

[48] It is said often enough that the finding of facts is a matter for the trial judge.

[49] In *Public Prosecutor v Munusamy* [1980] 2 MLJ 133, the Federal Court had occasion to deal with the issue of concurrent findings of facts and had this to say (at p 136):

> … Where there have been concurrent findings of facts in the lower courts it should not be made a practice in the appeal court to review these concurrent findings of facts unless it is shown there was no evidence to support the inferences drawn in the lower courts. … In *Hitam bin Abdullah & Anor v Kok Foong Yee (f) & Anor*, this point was dealt with in slightly more depth by Sir Harry Gibbs. In his judgment His Lordship emphasised that it is very well established that as a general rule, Their Lordships' Board will decline to interfere with the concurrent findings of two courts on a pure question of fact.

[50] In a more recent case of *Tan Kim Ho & Anor v Public Prosecutor* [2009] 3 MLJ 151; [2009] 3 CLJ 236, the learned Chief Justice, Zaki Tun Azmi reiterated (at p 252) as follows:

> It is an established principle of law that when dealing with finding of facts, the trial judge is more often than not, in a better position to decide. The appellate court must be reluctant to interfere with such findings, unless the facts obviously disclose the courts below had clearly and wrongly evaluated the facts.

[51] Having said that we would conclude by saying that there were no material contradictions in the prosecution's evidence.

[52] Indeed we find that there is no infirmity whatsoever in the concurrent findings of facts by the learned trial judge and the judges of the Court of Appeal which would require our appellate interference.

CONCLUSION

[53] Having read and reread the judgments of the learned trial judge and the Court of Appeal we agree that looking at the appellant's evidence in totality his (appellant's) denial that he had taken out the blue package from the boot of his car and thrown it nearby is neither credible nor probable.

[54] The appellant's defence that it was the police who had brought the blue package from nowhere is also neither credible nor probable. It is highly improbable to suggest that the police would have left the blue package containing 21 slabs of cannabis at that spot there and framed the appellant. To our minds, the police had no reason or motive to do so. PW5 was an independent witness and had no reason to implicate the appellant.

[55] The reasonable conclusion that we can draw from all these evidence is that the appellant's story that he did not know of the blue package is highly improbable.

[56] We also agree with the learned trial judge and the Court of Appeal that considering the totality of the evidence adduced by the appellant in his defence and weighing it against the prosecutions' evidence we can only come to one conclusion ie the appellant's defence had failed to raise any reasonable doubt that he was in possession of the drugs in the boot of the car.

[57] For the reasons we had given earlier we would also conclude that the appellant had not raised any reasonable doubt that he was trafficking in the drugs as per the charge.

ORDER

[58] In view of the authorities cited above and the reasons given we would affirm the order of conviction and sentence by the Court of Appeal.

[59] In the event the appellant's appeal against conviction and sentence is here dismissed.

Appeal against conviction and sentence dismissed.

Reported by Kohila Nesan